

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: American Energy

Date of Filing: February 13, 2008

Case No.: TEE-0053

On February 13, 2008, American Energy filed an Application for Exception with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that American Energy's Application should be denied.

I. Background

The DOE's EIA is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as *Petroleum Marketing Monthly*. This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

¹ 15 U.S.C. § 772(a); 42 U.S.C. §§ 7135(a)-(m).

² See H.R. REP. NO. 96-373, at 15, 17 (1979).

³ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

II. Exception Criteria

Congress requires OHA to grant exception relief where filing Form EIA-782B causes a “special hardship, inequity, or unfair distribution of burdens.”⁵ Since the Form EIA-782B reporting requirements burden all reporting firms, exception relief is appropriate only where a firm can demonstrate that a reporting requirement adversely affects it in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience⁶ or the length of time a firm has reported⁷ does not constitute a hardship warranting relief. Similarly, the fact that a firm is relatively small does not constitute a hardship warranting relief. If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.⁸

OHA has granted exception relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation was so precarious that the additional burden of meeting the reporting requirements threatened the firm’s continued viability;⁹ the firm experienced personnel deaths, illnesses or absences;¹⁰ and where extreme or unusual circumstances disrupted the firm’s activities.¹¹

⁵ 42 U.S.C. § 7194(a); *see also* 10 C.F.R. § 1003.25(b)(2) (allowing OHA to grant exception “to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens”).

⁶ *Glenn E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143).

⁷ *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035) (citations omitted).

⁸ *Mulgrew Oil Co., Inc.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012) (citations omitted).

⁹ *Mico Oil Co., Inc.*, 23 DOE ¶ 81,015 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years and prepared to liquidate its assets and file for bankruptcy); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm entered Chapter 11 reorganization and made court-mandated layoffs).

¹⁰ *Midstream Fuel Serv., Inc.*, 24 DOE ¶ 81,023 (May 31, 1994) (Case No. LEE-0083) (granting three months’ exception relief where a small firm experienced personnel shortages due to two employees on maternity leave, an uptick in paperwork due to the tax season, and an inability to hire additional personnel); *Ward Oil Co.*, 24 DOE ¶ 81,002 (Mar. 29, 1994) (Case No. LEE-0088) (granting ten months’ exception relief where a firm’s owner and office manager suffered a long illness and death, resulting in personnel shortages and administrative challenges that caused the firm to fall sixty days behind in its paperwork); *S&S Oil & Propane Co., Inc.*, 21 DOE ¶ 81,006 (Sept. 23, 1991) (Case No. LEE-0023) (granting exception relief where a firm’s owner worked nights and weekends amid a life-threatening illness); *E. Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months’ exception relief where a computer operator’s injury rendered the firm unable to complete the form).

¹¹ *Little River Vill. Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting several months’ exception relief where a firm’s office was flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (Nov. 28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm’s office and the firm concentrated its efforts on restoring service to its customers).

III. American Energy's Application for Exception

American Energy is a retailer and wholesaler of gasoline, diesel fuel, motor oil, groceries and car washes in Bend, Oregon.¹² American Energy filed its Application for Exception on February 13, 2008.¹³ American Energy stated that it requests permanent relief from its obligation to file Form EIA-782B because it has filed the form monthly as a non-certainty firm¹⁴ since August 2004.¹⁵

We contacted American Energy to gather more information. American Energy stated that it employs eleven administrative office personnel and seventy-five station and store personnel.¹⁶ American Energy estimated that it sometimes has “a person and a half” dedicated solely to meeting the Form EIA-782B and other federal and state-mandated paperwork requirements.¹⁷ The firm’s employee spends approximately sixty minutes completing Form EIA-782B. The firm uses a computer system to compile the “base data” for the form.¹⁸

IV. Analysis

Under the exception criteria stated above, the fact that filing Form EIA-782B is inconvenient for American Energy and that American Energy has filed the form for a number of years, does not establish that American Energy is experiencing a hardship significantly greater than the burden that other reporting firms experience. Indeed, we have denied exception relief to firms that spend longer filling out the form and that have far fewer employees and technological resources than American Energy.¹⁹

Additionally, the Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half

¹² E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008.

¹³ Letter from Greg Vernon, Executive Vice President, American Energy to OHA, received February 13, 2008.

¹⁴ E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, March 12, 2008.

¹⁵ E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008. The EIA allowed sample respondents August and September 2004 as “test months” so that they could become acquainted with the form. The EIA began using the sample respondents’ data in October 2004. E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, March 17, 2008.

¹⁶ Memorandum of telephone conversation between Greg Vernon, Executive Vice President, American Energy, and David M. Petrush, Attorney-Examiner, OHA, March 11, 2008.

¹⁷ *Id.*

¹⁸ E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008.

¹⁹ See, e.g., *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (Aug. 9, 2005) (Case No. TEE-0019) (denying exception relief where reporting took between two and three days, the firm lacked a computer system to compile data and could not afford extra help to complete the process); *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (May 2, 2005) (Case No. TEE-0018) (denying a small, busy firm exception relief where they “prepare[d] the form using a pen and calculator”); *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (May 22, 1997) (Case No. VEE-0041) (denying exception relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record).

hours per month to complete the form.²⁰ In this case, American Energy stated that it requires sixty minutes to complete Form EIA-782B – significantly less time than the EIA estimate. Furthermore, American Energy may reduce its reporting burden by employing reasonable estimates.²¹

For the above-stated reasons, American Energy has not demonstrated that it meets the standards for exception relief.

It Is Therefore Ordered That:

- (1) American Energy's Application for Exception, Case No. TEE-0053, is hereby denied.
- (2) Any persons aggrieved or adversely affected by this denial of exception relief may seek administrative review of this Decision and Order by filing a Petition for Review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order, pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date:

²⁰ Section 10 of the General Instructions to Form EIA-782B.

²¹ See Section 7 of the General Instructions to Form EIA-782B.